IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4401 OF 1995

Shri George Fredrick Fernandes, .. Petitioner.

Vs

1. The Deputy Collector, and anr .. Respondents.

Mr Sanjay Kshirsagar, for the petitioner.

Mrs S.S.Bhende, AGP for respondent nos 1 and 2.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.

DATE : March 29, 2006.

PC:

1. The petitioner is aggrieved by an order dated 30.6.1993 passed under section 8(4) by the Competent Authority and Deputy Collector and the subsequent order dated 22.9.1994 passed under section 33 of the Urban Land (Ceiling & Regulation) Act, 1976, by the Appellate Authority and the Collector,Kolhapur.

2. The petitioner claims that the ancestral property, viz. agricultural lands bearing CTS No.35A (R.S.No.1502), Sr.Nos 1 and 2, R.S.No.209/A/5 (old 7) and subsequently converted as NA plots, bearing CTS No.36B, sr.no.3 bearing

R.S.No.209/A, is the property of the family and the Competent Authority (Deputy Collector), Urban Land Ceiling, Kolhapur conducted an enquiry under section 8(4) of the Act and passed an order on 18.7.1979 revising the draft statement and direct him to issue final statement of surplus land. This order was challenged in ULC Appeal No.76 of 1979 before the Collector, Kolhapur who, by his order dated 22.1.1980, remanded the same to the Deputy Collector for fresh enquiry. The Deputy Collector passed a fresh order under section 8(4) of the Act on 31.1.1985 making the statement final. The petitioner was not satisfied with the fresh order and, therefore, in the second round he approached the Collector in ULC Appeal No.131 of 1986. The appeal was allowed by the order dated 18.8.1986 and the order passed by the competent authority was set aside with a further direction to implement the earlier order passed by the Collector on 22.1.1980. Fresh enquiry was conducted by the competent authority and the same resulted into an order dated 25.9.1987 by issuing the final statement. In the third round the petitioner approached the Collector in ULC Appeal No.17 of 1987 and the appeal was dismissed on 8.3.1986. The petitioner approached the State Government by way of revision under section 34 of the Act and the revision was decided on 25.5.1990 by the State Government in favour of the petitioner. The orders passed by the competent

authorities on 31.5.1985 and on 29.5.1987 were set aside and the case was remanded to the Deputy Collector for fresh enquiry and order under section 8(4) of the Act. Thus, in the fourth round the petitioner was directed to approach the competent authority. The competent authority passed his order on 30.6.1993 to the following effect.

> "Shri G.P.Fernandes is declared to be a surplus holder of 9588-67 sq.meters. That area should be demarked out of C.T.S.No.35A and R.S.No.209 A/5 as detailed above. The holder may submit a scheme under section 20 in its respect in time failing which the excess portion so deemingly surrendered should be taken in government possession."

The petitioner again approached the appellate authority under section 33 of the Act by filing ULC Appeal No.9 of 1993 and the said appeal came to be decided by the Collector on 22.9.1994. It has been partly allowed. The case was remanded again to the competent authority with a direction that the contention regarding the area under building and other structures was required to be excluded while calculating the extent of the vacant land, was required to be considered and, if required, modified order be passed. The appellate authority was aware that the issue was taken up before different forums right from the year 1978-79 and, therefore, the case was directed to be decided afresh within two months.

3. The enquiry on remand is limited to the extent to find out whether the area occupied by the building structures is required to be excluded from the total holding to arrive at the surplus land held by the petitioner, i.e. 9588-67 sq meters. The order passed by the lower appellate authority was subject to revision under section 34 of the Act but the petitioner, rather than invoking that remedy, preferred to approach this Court invoking Article 226 of the Constitution.

4. After hearing the learned counsel for the petitioner at length, we are of the considered view that the enquiry directed by the lower appellate authority to the limited extent can be more appropriately conducted by the competent authority and such an enquiry has been rightly ordered and, that too, at the instant of the petitioner. It was not possible for the lower appellate authority to determine the exact area occupied by the building structures whether for residential or for any other purpose and this could be more efficaciously done by the competent authority by visiting the site or by appointing the commissioner. Invoking the remedy of a writ petition under Article 226 cannot be allowed and the exercise sought to be carried out by the order of remand is required to be completed by the competent authority alone.

5. We, therefore, dismiss the petition and direct the

Deputy Collector to proceed with the enquiry as per the remand order which has been impugned before us and complete the same within a period of two months from the date of receipt of writ from this Court. The interim orders stand vacate. Rule discharged. No costs.

6. We also make it clear that while deciding the issue as directed by the lower appellate authority, the competent authority shall consider the circular issued by the State Government from time to time as well as the personal law as applicable to the holders.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**